



ENVIRONMENTAL QUALITY COUNCIL

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Walter L. McNutt
Jon Tester
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Tom Ebzery
Julia Page
Ellen Porter
Howard F. Strause

LEGISLATIVE
ENVIRONMENTAL
ANALYST
Todd Everts

ENVIRONMENTAL QUALITY COUNCIL September 12, 2002 State Capitol, Helena FINAL MINUTES

COUNCIL MEMBERS PRESENT

SEN. BEA McCARTHY, Chair
REP. DOUG MOOD, Vice Chair
SEN. MACK COLE
REP. MONICA LINDEEN
REP. DON HEDGES
REP. DEBBY BARRETT
REP. PAUL CLARK
SEN. PETE EKEGREN
SEN. WALTER McNUTT
SEN. KEN TOOLE
MR. HOWARD STRAUSE

MR. TOM EBZERY
MS. JULIA PAGE
MS. ELLEN PORTER
MR. TODD O'HAIR

COUNCIL MEMBERS EXCUSED

REP. CHRISTOPHER HARRIS
SEN. JON TESTER

STAFF MEMBERS PRESENT

MR. TODD EVERTS
MR. LARRY MITCHELL
MS. MARY VANDENBOSCH
MS. KRISTA LEE EVANS
Ms. Robyn Lund, secretary

AGENDA

Attachment 1

VISITORS' LIST

Attachment 2

COUNCIL ACTION

- Adopted the minutes of the previous EQC and Subcommittee meetings.
- Requested segregation of agency proposals by the DFWP, No. 3.
- Reconsidered and passed the DNRC's legislative proposal dealing with lease agreements between the FWP and the DNRC
- Decided to rescind request for MEPA reporting for the DFWP.
- Approved EQC subcommittee publications.

I CALL TO ORDER

Roll call was taken.

II ADOPTION OF MINUTES

• EQC

MOTION/VOTE: REP. HEDGES moved to adopt the minutes of the July EQC meeting. The motion passed unanimously.

• Coal Bed Methane/Water Policy Subcommittee

MOTION/VOTE: MR. EBZERY moved to adopt the minutes of the July Coal Bed Methane/Water Policy Subcommittee meeting. The motion passed unanimously.

• Agency Oversight/MEPA Subcommittee

MOTION/VOTE: MR. STRAUSE moved to adopt the minutes of the July Agency Oversight/MEPA Subcommittee meeting. The motion passed unanimously.

• Energy Policy Subcommittee

MOTION/VOTE: SEN. McNUTT moved to adopt the minutes of the July Energy Policy Subcommittee meeting. The motion passed unanimously.

III ADMINISTRATIVE MATTERS

MR. EVERTS said that the EQC will be paying for per diem and travel for today and tomorrow, but will not pay salary for the special session.

Upcoming legislative events, including Senate and House caucuses, are scheduled for November 20. There will be a law school for all legislators on November 20 and the new legislator orientation will also be held in November.

An evaluation form has been sent to the EQC members. The evaluations are important for staff and Legislative Council to help them assess the effectiveness of the EQC process.

IV REVIEW OF LEGISLATIVE AGENCY PROPOSALS

MR. EVERTS said that the last agency that will present legislative proposals is the Department of Fish, Wildlife, and Parks (DFWP). The purpose for reviewing agency legislative proposals is to request legislation for bill drafting purposes. The Legislative Council envisions that most bills will be requested for drafting.

Jeff Hagener, DFWP, said that all of these proposals are still works in progress. There are many that are still being discussed with other entities. He presented **EXHIBIT 1**.

The proposal for a resident fee increase was withdrawn, but will be presented in 2005. There are 4 place holders for legislation that may come forward.

The DFWP needs authority to enforce laws on site. They are looking at a memorandum of understanding (MOU) with the peace officers on the most affected sites, so this proposal was withdrawn. Another issue is reciprocity of the snowmobile users with other states. They feel that they have worked this out and it is not necessary to move forward with this legislation.

Chris Smith, DFWP, said that the first proposal refers to retaining money for fishing access site operation and maintenance. Within the current statutes a dedicated portion of fishing revenue is earmarked for the fishing access account. The statute currently says that at least 50% must be used for operation and maintenance. This language sunsets in 2004. They are hoping to extend that date. The department needs to spend more on operation and maintenance and less on acquisitions.

REP. HEDGES asked why that language would not be amended to state 25% on acquisition and 75% on maintenance. He said he doesn't feel that 50/50 is the right number. **Mr. Smith** said that the department can already allocate that way. The bill states a minimum of 50%. In addition to the earmarked revenue, they have allocated \$170,000 into the fishing access site program. One of the budget proposals is to increase that again.

REP. BARRETT asked if any of this earmarked money has ever been redirected to somewhere else. **Mr. Smith** said that he didn't know of any that had been. It is in a separate account.

REP. BARRETT asked, regarding the last biennium and the alternative pay program, was any of the fishing access site money allocated to that pay plan. **Mr. Smith** said no.

MS. PAGE asked if the state is out of opportunities to get new access sites. **Mr. Smith** said that there are more sites available. The department continues to add new sites, but a lesser number of them. There are areas where there are longer stretches between established sites where the DFWP is trying to pick up new sites. One of the larger acquisitions they are working on deals with assuming responsibility for several Department of Natural Resources and Conservation (DNRC) sites. **MS. PAGE** asked if they are able to accumulate the unallocated amount if it is not spent on an acquisition. **Mr. Smith** said that they are.

MS. PAGE asked if they differentiate capital improvements in the budget. **Mr. Smith** said that both capital improvements and operating expenses are budgeted. Some is budgeted through House Bill 2.

REP. MOOD asked if the current allocation is 50/50 and will revert to 25/75 in favor of acquisition. **Mr. Smith** said that unless the department repeals the sunset on the clause that

inserted the 50/50, the law would revert to its former language, which would allocate 75% to acquisition and 25% to operations and maintenance.

REP. HEDGES asked what percent of the fishing access lands are adjacent to state highways. Is there a reciprocity with the state highway department so that both departments are not maintaining the same areas? **Mr. Smith** said that he is not aware of an arrangement such as that. Generally there is a care taker for those duties. It is generally a local person that is hired on a part time basis through the DFWP to keep up the maintenance on a number of access sites. When there is a project that rises to the level of resurfacing roads, they try to organize with the state project or county project. They also contract with the county for weed control on DFWP sites.

REP. HEDGES asked for the percent of maintenance money spent on these sites. **Mr. Smith** said he would provide that.

REP. BARRETT asked if the DFWP is going to allocate an addition \$170,000 for maintenance, where does that come from. **Mr. Smith** said that is the fund balance of the general licensing account, so they will be drawing from their savings account to increase funding on their fishing access sites. It won't be coming from other programs.

Mr. Smith said that proposal 2 is an issue that was discussed with the DNRC at the last EQC meeting. There was originally going to be 2 pieces of legislation, but there is now one. The issue is that for recreationists to use state school trust lands, they must purchase a state recreation use license. That approach is inconvenient for the public and is an administrative burden for the DFWP and DNRC. This approach fails to fully compensate the school trust for use of these lands. The proposed alternative is that the DFWP enter a licensing agreement on behalf of the public for use of all state school trust lands. They are proposing that the bill authorize the Land Board to enter an agreement on a lease with the agency for the use of the state lands, and they would compensate the trust for that use. It would greatly simplify the process and provide greater benefits. There are some questions that need to be addressed. Should the Land Board be authorized to enter this agreement? Should the DFWP be authorized to increase license fees so that when they enter that agreement it doesn't have an adverse effect on DFWP programs? This is what has to be answered today. The last question is what the price will be. This will be resolved through negotiations with the DFWP and the DNRC. It has to be priced at the fair market value of that use. This is not a legislative question. The authority to enter into this lease and the value of that must be discretionary for the DFWP. If money were earmarked it would be a diversion of funds and the DFWP would lose federal funds. They feel that the price will be between \$400,000 to \$500,000 per year. They need to add \$1 to the price of a conservation license to cover that cost.

REP. HEDGES asked why the state doesn't expand the legislation and the licensing fee to include access to state parks. **Mr. Smith** said that that would present the same problem with respect to eligibility for federal funding. The only uses that the DFWP can license from an entity and pay for with license revenue are the license uses such as hunting. **REP. HEDGES** said that they have interpreted the Pittman-Robertson Act restriction too broadly. When that came about they were not talking about a general conservation license. The rationale of losing government funding is not appropriate. **Mr. Smith** said that this funding is just for fish and wildlife. They can explore that option with legal counsel. **Mr. Bob Lane, DFWP legal counsel**, said that they can't use license dollars for uses other than fish and wildlife. License dollars are defined as the things that you pay to hunt, fish, or trap. They don't interpret the federal requirements, the U.S. Fish and Wildlife Service is the one that does that. They are very clear on what they define as

conservation dollars and what the uses can be. **REP. HEDGES** said that it should be called an access permit instead of a conservation license. The federal government has no control over what the state decides the fee should be for gaining access to state lands. **Mr. Lane** said that if it is an access license, that would be true. **REP. HEDGES** said that the state should get rid of the conservation license and call it an access permit and the federal government would be off the department's back.

Mr. Lane said that the part that will be a prerequisite for hunting and fishing and there would always be a license fee for those activities. There are other fees such as camp site access fees. **REP. HEDGES** said that in order to gain the support of the voters, he has to assure them that we are concentrating on funding childcare, schools, and medical care. Those types of funding have a higher priority. Any legislation out of this group that doesn't include that type of priority is not going to get his support.

Mr. Jeff Hagener, DFWP Director, said that it has taken a long time to get where they are now, if the proposal gets more complicated it will not happen.

REP. CLARK asked what the fee that is charged to hunters is called now. **Mr. Smith** said that it is the state lands recreational use license fee. **REP. CLARK** asked who that fee actually applies to. **Mr. Smith** said that any person who recreates for any purpose on any state school trust lands has to have that license. **REP. CLARK** asked if it includes hikers, bird watchers, hunters, etc. **Tom Schultz, DNRC**, said that this legislation is just limited to hunters, fishers, and trappers. **REP. CLARK** asked if there is a mechanism in place to cover the other users. **Mr. Schultz** said that the Trust Land Management Division has a small fund for administering the recreational use program. Part of that would go to paying for the non-hunters to recreate on state lands.

REP. CLARK said that there are a lot of people who don't use state lands. This is a tax on those who fish to pay for those who use state lands. **Mr. Smith** said that they are spreading out the cost. The benefits are avoiding enforcement problems or for the recreating public who may inadvertently wander on to the state lands. In some cases it is difficult to know if you are on or off state lands.

REP. MOOD asked how many conservation licenses were sold in 2001. **Mr. Smith** said that there were around 452,000 sold. **REP. MOOD** said that it is obvious from this discussion that this should be debated in the session.

MS. PAGE asked how much they would raise the price from the current recreation fee. **Mr. Schultz** said that there are gross revenues of \$350,000 per year. This would be a net gain to the trust of over \$100,000. They would see 25,000 to 30,000 of these per year. There is not a lot of inequity. They are trying to make everyone legal. **MS. PAGE** asked if beyond the \$150,000 for administrative costs, is there also a budget for enforcement? **Mr. Schultz** said that there is no enforcement budget.

REP. CLARK asked about the people that should be paying to use the land for other purposes. He stated this should be done through a \$1 tax increase on everyone because some day that person may possibly recreate on state land. **Mr. Smith** said that the DNRC does not have enforcement authority, but the DFWP does. They ticket people every year for recreating on state lands without a license. If the Legislature chose to use general tax revenue to compensate

the trust, it would eliminate the need for this agreement. **Mr. Schultz** said that 8 to 10 months ago Montrust petitioned to have the state recreational use fee raised from \$10 to \$25. This is in part a response to that petition. If the price were to go to \$25, would anybody purchase those?

MR. STRAUSE asked if the conservation license can be bought separately. **Mr. Smith** said that it could be purchased for \$4 to \$7. **MR. STRAUSE** asked why not have that requirement.

Mr. Smith said that requirement would need to be initiated by the DNRC. Funds for that would be allocated to the DNRC rather than the DFWP. **MR. STRAUSE** said that he would be paying extra for his hunting license and would then have to also purchase a recreational use license. He does agree that there are a lot of people that use state lands to get access to streams and hunting access without buying a license.

Mr. Smith said that No. 7 is being withdrawn. No. 3, is about maintenance of fishing access sites. They have responsibility for water safety regulations, providing water safety education and maintenance of state parks. At present, one of the funding mechanisms for these programs is the boat decal fee that is assessed to individuals who own a qualifying boat. Those persons are required to register yearly and pay a fee in lieu of tax. \$3.50 is taken as a decal fee. Of that \$2.00 is allocated to the enforcement division and 50 cents goes to the parks program to support construction, operation, and construction of boating facilities. The county keeps \$1.00 as an administrative fee. One proposal is to increase the decal fee for boats that are already registered. They are looking at \$10.00 for the decal fee. In addition, they are proposing a new decal fee for all other boats. These other boats would not be required to register with the county, but would need to purchase the decal. The funding from that would be used to support a variety of programs such as law enforcement and water safety education. Any decal revenue used in that fashion can be matched 1 to 1 by the federal coast guard. A portion of that would go to enhanced maintenance of the fishing access sites. They would like to see a portion of this money to go back to the county to help with road maintenance or weed control. The Parks Futures Committee has been discussing this and has recommended that some of these funds would go to the parks system. This concept was proposed in the last legislative session. That bill did not pass the House.

REP. HEDGES asked if there would be any service from the DFWP on the boats that purchase the decal. **Mr. Smith** said that the service would be improved operation and maintenance of the fishing sites which many people use to put their boats in the water. There is the option to request an inspection of the boat. The distinction between the new fee and the existing fee is that there will be no retroactive fee.

SEN. McCARTHY asked if there would be a discount for individuals who own more than one boat. **Mr. Smith** said that they had not talked about that, but could look at a prorated approach.

MR. STRAUSE asked if the decal should be changeable between boats. **Mr. Smith** said that is another option that could be explored. There may be some enforcement issues. This proposal would spread the costs among all people using the fishing access sites.

REP. LINDEEN asked how much money currently funds those programs and is there data to show that it is essential that more is needed. **Mr. Smith** said that he could provide that information. With the program needs, that could be documented. With respect to water safety and enforcement, there are federal dollars but a state match is needed to receive those.

SEN. EKEGREN asked if they are asking for more money, but at the same time they are open to discount rates or a reduced rate for multiple boats. By suggesting this bill, they are saying that they need more money but are still willing to compromise. **Mr. Smith** said that the public is asking the DFWP to increase their efforts in areas of water safety education enforcement and maintenance of access sites. There are also funding needs for the parks program. They can't do this without more money. They are open to discussion to refine and reach the appropriate balance between program needs and public willingness to pay. **SEN. EKEGREN** asked about not collecting back fees for the decal. It seems like as the DFWP asks for more money, at the same time they are taking away a method of the current funding. **Mr. Smith** said it is an annual use fee.

SEN. TOOLE asked if all water craft will pay the fee at the same rate. **Mr. Smith** said that there is no present fee for canoes, kayaks, etc. Under the proposal the decal fee would be the same. **SEN. TOOLE** suggested that there be some consideration for small craft that don't use the ramp, perhaps they should have a lesser fee.

Mr. Smith said that, referring to the next proposal, the licensing laws that govern the use of the resident license were adopted in the pre-information age. They are moving toward a system that would allow the purchase of licenses over the phone or internet. There are some potential loop holes in the current law with this. A nonresident can hunt with a resident license, even though they can't purchase a resident license. This was easy to deal with when licenses had to be bought face to face. Over the internet there will be no way to prove who buys what license. This is a cleanup bill that would allow them to provide this service, but protect them from fraud.

Mr. Smith said that No. 6 is a placeholder. This Park Futures Committee has not completed their deliberations. The parks program is supported by 5 areas: coal trust tax, trust fund revenue, motor boat fuel tax, the bed tax, and user fees. At present, the state parks program is operating at a deficit. They are spending \$250,000 per year more to maintain the parks program than they are generating for revenue. Given the current spending pattern they will deplete the fund balance in 2005. At this point there will be substantial reductions to the parks program. In order to address this, they have eliminated all capital expenditures in the parks program for the upcoming biennium. There has been a panel appointed to look at the state parks program. That is the State Parks Futures Committee. The focus of the committee has been on identifying additional ways to generate money. One other concept would be instead of charging the \$4 entrance fee to add a \$4 charge when you register your vehicle with the state

Mr. Smith said that No. 9 is also a placeholder. No. 10 would modify the statutes to make it a violation of state law to operate a snowmobile on public land under the influence of alcohol or mind-altering drugs. There have been some claims against the state on trail systems that the DFWP maintains for failure to maintain a safe trail, when the problem was that the operator was under the influence.

REP. HEDGES asked why this is just on public lands. **Mr. Smith** said that this was applied broadly initially. It was at the request of their commission that this scope of this be narrowed.

Mr. Smith said that regarding No. 12, elk populations have been increasing in the state. The DFWP is challenged in maintaining those populations. The harvest is decreasing at the same time. Under the statute a hunter is limited to one elk per year. They are changing that so that a hunter is allowed to purchase a second license, providing that only one of the two elk is an

antlered elk. The second part of this is to impose a waiting period for areas where there is significant demand to harvest a trophy bull elk.

MR. O'HAIR said that the problem that the landowners have is not from an overpopulation of bulls, it is from an overpopulation of cows. He is wondering if this will create a problem rather than solving it. **Mr. Smith** said that this would simply allow the person to buy two tags. You could shoot two cows, but never will be able to shoot more than one bull. The goal is to provide a greater harvest.

REP. LINDEEN asked how many elk the DFWP takes as a result of not bringing in hunters who have tags. How much money is being spent on those activities? **Mr. Smith** said that generally they don't take very many elk. It would generally be less than 10 animals. **Director Hagener** said that the Pompey's Pillar situation is that there are 500 elk in an area that had no elk 5 years ago. They are causing problems in the agricultural fields. There have been 15 elk killed. There are now special hunts going on in there. Night hunting is not allowed. **REP. LINDEEN** said that they have a ranch near the ranches having this problem. At one time there was a large elk population there. There is a landowner, not originally from there, who is now planting crops to attract these animals. She would hope that the DFWP would spend some more time looking into that. The Wildlife Federation has talked about allowing some actions on situations like this that the DFWP can't manage. **Mr. Hagener** said that this is an issue throughout the state.

Mr. Smith said that No. 13 will eliminate the stamp and the art work and the requirement in the statute that they produce a stamp. Interest and participation has declined. The interest in collecting them has also declined. A number of states have moved away from this requirement. At present there is a net loss of \$11,000 per year.

Proposal No. 14 is a placeholder to some extent. The DFWP has been involved with other agencies in developing an aquatic nuisance species plan. This plan is required by federal legislation if the state wants to apply for federal matching funds that would allow them to control aquatic nuisance species. The plan is currently out for public review. In the course of working through this they have identified areas where state statutes may need to be amended.

Proposal No. 15 is also a placeholder. There is an advisory committee in the northeast corner of the state where there are not currently any state parks. This committee is examining sites and a recommendation is expected from them that could potentially add a state park in that area.

Regarding No. 16, there has been an increase in lion hunting activity. During the last session the Legislature authorized a delegation of authority to limit the number of nonresident lion tags that can operate in a hunting district. There was some discussion at that time about applying this state wide. The decision was to try this on a trial basis for one biennium in one region. It has been very helpful in addressing some of the issues in managing lion hunting. This proposal is to remove or extend the sunset date. It is currently limited to region 1, west of the continental divide and north of Highway 200. They want to expand this to cover the primary habitat of the lion.

Regarding proposal No. 17, a few years ago there was a programmatic environmental impact statement (PEIS) review of their management of shooting preserves. That review identified a number of technical issues that needed to be corrected. This is mostly a housekeeping bill.

REP. HEDGES asked if there are other turkey species besides the Miriam. **Mr. Smith** said that there are. This would mean no turkeys could be raised and released on a shooting preserve.

No. 18 deals with taxidermists. The DFWP has looked at the laws regulating taxidermy industry for many years. They are proposing to increase the fee for the taxidermists from \$15 to \$75. The \$15 fee was set in 1923.

SEN. McCARTHY asked for the number of fees collected. **Mr. Smith** said just over 400.

REP. HEDGES asked why isn't the licensing of taxidermists the responsibility of the Department of Commerce. **Mr. Smith** said that it is because the DFWP administers the licenses and oversees the activities of the taxidermists.

SEN. McCARTHY said that we can assume that none of the duties have been looked at since 1928 either. **Mr. Smith** said that is probably correct.

Mr. Smith said that No. 19 is a cleanup bill. This will reduce the age where you would be required to have a trapping license from 13 to 12.

No. 20, **Mr. Smith** said that this bill contains a number of minor technical problems that were identified in a review of the statutes. This is a cleanup bill.

No. 21 is to remove the sunset on upland game bird licenses. A number of years ago the Legislature delegated authority to the commission to place a cap on the number of non-resident upland game bird licenses. The commission imposed a cap of 11,000 non-resident upland bird licenses. In the late '90's the number of upland game bird hunters was increasing, but since then they have dropped to 8,000 to 9,000 non-resident licenses. This would simply continue the commission's authority so that if at some point in the future the trend reverses and there are conflicts between non-resident and resident hunters, the commission has the authority to maintain or establish some other cap.

No. 22 is a placeholder. Recreational conflicts on state rivers have been an issue before the Legislature in the last 2 sessions. The DFWP is working to establish a broad-based citizens advisory council that includes a full range of interests involved in the recreational use of rivers. It is not known if the council will generate proposals that will require legislative actions, but if they do this is the placeholder for those.

No. 23 is to extend funding for the remaining bull trout program. In 1999 Legislature established a program to enhance bull trout and cut throat trout habitat in the state. It included a \$750,000 appropriation of funding authority to support those programs. The program goes for 10 years, but the funding ends in 2003. This extends the authority to use that funding over the life of that program.

REP. LINDEEN asked how much has been spent and what has it been spent on. **Mr. Smith** said that about half of the funding has been spent. He can provide a list of projects. **REP. LINDEEN** asked about RIT money that was also made available to the program. **Mr. Smith** said that the agency does have RIT funding. Mr. Hagener said that it has been reduced to help with the general fund crisis. They had not been spending that money. It is not exactly the same program that is addressed in the proposal. It was more geared toward native trout, whereas the proposal is dealing with bull trout and cut throat trout, which have been petitioned for listing.

REP. LINDEEN asked why the spending authority was only given for 3 years. **Mr. Hagener** said that he didn't know the specific intent. Some of the projects have taken longer to get going.

SEN. McCARTHY asked for public comment. There was none.

SEN. McCARTHY asked if any of these had been through the Legislature in the past, other than No. 3. **Mr. Smith** said that all of those that dealt with the sunset clause had been previously been before the Legislature.

MOTION/VOTE: REP. LINDEEN to segregate Nos. 2 and 3.

MOTION/VOTE: REP. HEDGES moved for the drafting of proposals. The motion passed unanimously.

MR. EVERTS said that the Council had told the DNRC to proceed with the bill draft of No. 2.

REP. HEDGES said that the EQC essentially approved the drafting of No. 2 philosophically, they can proceed. The EQC doesn't need to approve it twice.

MR. EVERTS said that it sounds like the proposal that was adopted by the EQC is the same proposal that is here in No. 2. They originally thought that 2 pieces of legislation were needed, but now it sounds that there is only one needed.

REP. CLARK said that the original proposal was to approve what the DNRC had presented to the EQC. Now the Council is shifting the drafting responsibility and the emphasis of the bill. Is the EQC withdrawing the original proposal at the DNRC or is it just transferring the responsibility to the DFWP? He would like to reconsider No. 2.

SEN. McCARTHY said that the Council made the decision at the last meeting. That was what the group voted and she would say that we should go with that. It will go forward with the DNRC but not the DFWP.

MR. EVERTS said that the group can reconsider their actions.

MOTION: REP. CLARK moved to reconsider proposal No. 2.

Discussion:

REP. CLARK said that he doesn't feel that he has enough information to endorse this.

SEN. McCARTHY said that this is dealing with the recreational use licenses that the Council had approved with the DNRC.

MS. EVANS said that the idea behind the process of running the agency bills through the committees was for the committees to step in to where Legislative Council used to be for requesting bills. If you request a bill it does not mean that you endorse it. The purpose is to smooth out the workload for staff.

MR. EBZERY said that there is a perception in the public and amongst the legislators that when you see the name EQC there is an implied endorsement of that.

MS. PAGE said that at the last meeting it was her understanding that this is actually more of a procedural thing when the Council is asked to request these bills. Is there going to be a distinction in the future between a bill that the EQC is asked to request and the bills that actually come from the EQC? **MR. EVERTS** said that these bills will be by request of the DFWP. This is a procedural matter that has been delegated to the EQC that is intended to help staff with their work load management. Part of the process is for the Council members to interact with the agencies and to make their concerns known.

MS. VANDENBOSCH said that there can be confusion because when people look on the LAWS system to see what bills are out there, it says that the bills were requested by the EQC. There is a difference between "requested by," and "by request of."

SEN. MCCARTHY said that at the last meeting there were 13 members voting on the similar DNRC proposal. The vote was 12 to 1 with REP. BARRETT voting no.

REP. MOOD said that this agency legislation review process started in the Committee on Public Employee Retirement Systems. They requested that the agencies bring their bills so that they would know what was coming up in the committees. If a bill draft request is being sent to the staff for the processing, the Legislature should know that that bill has been given to them.

REP. LINDEEN said that this gives the departments a chance to gauge the political climate for each of these bills. She thinks it would be wrong to approve every bill draft without question. The message that we send to the departments when we reject certain bill drafts is, maybe you should reconsider having it drafted at all.

MR. EBZERY said that he will vote to reconsider it. He would like to hear the debate from those who were not able to come to the last meeting. If this is not reconsidered, people will not get their say.

VOTE: Motion to reconsider passed 11 to 4 with REP. HARRIS (by proxy), REP. HEDGES, SEN. EKEGREN, and MR. STRAUSE voting no.

Discussion on proposal:

REP. BARRETT said that she will support this because people are using the state land anyway, and they are not paying. This will make them all pay.

REP. CLARK said that there was a distinction of what the term requested means. There is a lack of clarity on this issue. This is going to be a controversial bill. This is about the whole process of state lands and how user fees are assessed. If it passes, it should pass on its own merits without the endorsement of the EQC. He is not comfortable requesting the bill.

REP. HEDGES said that he is going to vote in favor of requesting the bill. This may make it easier for people to be law abiding citizens.

REP. MOOD said that every session he has been in there has been a bill to eliminate the \$10 fee. The fact of the matter is that the debate always goes to the fact that these are school trust lands that are to generate revenue to the schools. If we don't generate revenue off of these lands, then there is going to be a lawsuit which would force the state to sell the lands and put

the money in the bank to collect interest. He will vote for the DNRC to proceed with the bill draft. This bill needs to be debated during the session.

SEN. TOOLE said that he is not sure if he has recreated on trust lands, but wasn't aware that a permit was needed. He will support this because this deals with the school trust land. We need to make sure that this discussion is occurring and this proposal is a good vehicle for that.

SEN. McNUTT asked has there been consultation with the sportsmen groups and how do they feel about this. **Mr. Hagener** said that there are a lot of endorsements of this idea. It is time for the DNRC and the DFWP to work together. **SEN. McNUTT** said that has a lot of bearing of how well it will be perceived. He thinks this needs to go forward

MOTION/VOTE: **REP. MOOD** moved to reaffirm previous action to allow the DNRC to go ahead with their bill draft request. The motion passed 14 to 1 with **REP. LINDEEN** voting no.

V **RESPONSE FROM DFWP ON THE EQC'S LETTER REGARDING THE BIG HOLE/BEAVERHEAD SEASONAL RULES**

MR. MITCHELL referred to **EXHIBIT 2**. There is a MAPA process exception for seasonal rules, which are not rules by definition. That is what triggered this letter. The concern was that the Subcommittee was not sure what the criteria is for departments to use this seasonal exemption. The EQC sent a letter asking the DFWP to describe when it used that seasonal exemption. The response was that the Fish, Wildlife and Parks Commission doesn't have a written policy or written criteria for when they use that exception. They use the statute itself.

The EQC asked for suggestions for legislative change. The department felt that the criteria in the seasonal exception was sufficient, except for the fact that the statute says, "the substance of the rule is indicated to the public by means of signs and signals." In cases where there is a substantial rule, it is difficult to get it all onto a sign. There is concern of what exactly has to be on the sign. The department provided some suggestions for changing that part of the law to say at points of public access to recreational areas and waters, that there are seasonal biennial rules available for that area.

REP. BARRETT asked if the definition of seasonal is in the statute. **Mr. Lane** said that there is no definition in the statute. In the response they tried to describe how they have implemented the use of seasonal. **REP. BARRETT** asked about not including recreation in hunting, fishing, and trapping. Will it cause the department to lose federal funding? **Mr. Lane** said that they will not lose any federal funding. They have authority to regulate other uses of the rivers beyond fishing, but they will not lose federal funding.

MR. STRAUSE asked if some action had been taken in the last few months on the law suit. **Mr. Lane** said that the suit has been filed and served on them. They responded by presenting the administrative record. This record is 5 volumes of around 2,000 pages per volume. There has been no rule that has come close to this public process. The next step will be setting a briefing schedule.

VI **UPDATE OF DFWP MEPA REPORTING TO EQC**

MS. EVANS referred to **EXHIBIT 3**. She had been requested to work with the DFWP with regards to developing some sort of MEPA reporting on issues that the department is not doing

MEPA on, but potentially should be. This started to grow exponentially. They didn't know where to start or where to end. This is a huge undertaking by both EQC staff and DFWP staff. This EQC has already allocated staff time for the interim. Last interim the EQC conducted a study on MEPA with one of the objectives to look at the efficiency of MEPA. The next EQC starts from scratch and can allocate staff resources as they choose.

There are a few options. The Council can request that staff continue to work on this reporting process. If this happens, the Council needs to define sideboards. A second option is to request a study resolution for the 2003 session. They can write a letter to the next EQC, or they can drop this issue.

REP. BARRETT said that since this was at her request, it was not her intention for staff to have anymore work than they have. She would move to rescind her request at this time.

MOTION/VOTE: **REP. BARRETT** moved to rescind her request for MEPA reporting for the DFWP. The motion passed unanimously.

VII DFWP UPLAND GAME BIRD PROGRAM REVIEW

MR. EVERTS said that this is not a new issue to the EQC. See **EXHIBIT 4**, a chronology of other EQC actions. This issue first came before the EQC in September 2000. The EQC formally requested that a performance audit be done. It was performed by the Legislative Audit Committee. SB 304 was a result of that audit. In December 2001, Mr. Ed Smith raised additional concerns. Rep. Shockley and a number of other legislators requested that this issue come before the EQC.

• Rep. Shockley

Rep. Shockley said that he is speaking on amendments to the Upland Game Bird Enhancement Act. In 1987 there was a bill that provided for the release of pheasants. In 1989 that was amended to include other birds. This was going to be accomplished through a variety of range management ideas. Over about 14 years there were 8 million dollars raised. The sportsmen of this state paid \$2 per head of game bird, and the out-of-state sportsmen were charged \$23. The money was spent imprudently over the last few years. One concern is the example of the Russell Ranch. The Russell's received over \$400,000 between their 2 ranches. This was a fiasco. They got \$252,000 up front with no supervision. It was simply incompetence. This program has not been managed. The biologists in the field have mostly a background in other species, not birds. We are not getting birds for the buck. The biologists are oriented towards big game and didn't have the money or experience needed. Rep. Shockley proposed that the state doesn't spend any money for new projects until it knows which projects work and which are cost effective. The money would be put in escrow for 2 years while the department assesses the projects that they have done over the past few years. An agency needs pressure in order to work. Rep. Shockley proposed that this amendment sunset in 2 years. This will give the department focus and time. He said he feels that this is a good compromise.

SEN. McCARTHY asked if there was a bill draft. **Rep. Shockley** said that there was not a bill draft as yet. The DFWP should do whatever is necessary to assess the program and he wouldn't be cheap about that.

• **Jeff Hagener, Director of DFWP**

Mr. Hagener referred to **EXHIBITS 5 and 6**. He stated there has been some concern over the program for several years. In 1998, there was an upland game bird habitat enhancement program evaluation that the department did under contract to look at the sites that are out there. The executive summary is included in the exhibits. They looked at about 70 sites in 1998. There is a summary of the program reception. The landowner reception to the program is positive. The DFWP likes the program and believes that it has benefits. However, the DFWP staff doesn't have the necessary time for this program. This is a reality. The public reception to the program is also good. It helps create accessible public hunting land. On the last page it says that clear statewide practices need to be followed consistently and are important to the success of the program. The audits did point out some of the same things. There are still other things that need to be addressed. They have taken a substantial amount of time to turn the program around. In addition to that, they have hired an FTE to look at the upland game bird program. There are 2 parts to the program that will have to be looked at. One of the questions he has is that if they go for another study, what is the basis of that study. Is the dollars per harvest really what needs to be looked at? They are looking at putting upland game bird money toward the sage grouse to prevent a listing. They are concerned about missing opportunities if this program is put on hold for 2 years.

• **Public Comment**

Andrew McKean, National Wild Turkey Federation, submitted written testimony, **EXHIBIT 7**. He stated that this program is the smartest, most forward looking thing that the department has done. He is concerned about using the dollars per bird comparison. This is a long term habitat development program. A lot of the habitat is improvement that is being done after a century of use that hasn't been habitat friendly. He sees some real benefits over time. It has helped agricultural depuration issues in eastern Montana. As a taxpayer he feels that this is a more cost effective way than simply releasing birds. The program needs some help but is worth holding on to.

Ben Deeble, Biologist, Big Sky Upland Bird Association, said that he has never received any funds from this program. He has been involved in sage grouse planning for Montana. He is working to draft the conservation plan. He has also been organizing volunteers to collect population information in the spring of every year. There has just been a petition filed to list sage grouse in Montana. One of the best tools that the state has to prevent listing is this program. Presently the program is the only tool that Montana has to implement habitat protection for the species. The Legislature may have the ability to keep a species that is abundant in Montana from being listed. He heard from Montanans about what they felt was key to conservation. It was critical that the conservation measures in the private sector be incentive based rather than punitive. This program does that. It creates a win/win situation. Not all of the projects have been perfect. We need to know which ones failed and why. This program is prevented from answering the success or failure question by a legislative cap which prevents more than 10% of the program budget from being spent on administration or evaluation of the projects. They have never been able to get all the information that they need. The evaluation also goes to the proposal to suspend all projects. One of the best tools is the before and after comparisons. If there are no new projects there will be no baseline study for the comparison. As a hunter he now has a list of 700 properties that he can hunt on. These projects are designed to get populations through the roughest part of the year. This programs pays its own way, not taking from the general fund. He gladly will pay increased fees.

Ed Smith, sponsor of the program legislation, referred to **EXHIBIT 8**. This law has been in place for 15 years and very little has been accomplished. It was recommended that an audit be done on the program, including a detailed analysis of all program expenditures. The Legislative Audit Committee decided that such an audit would be useful. The audit was done on 10% of the contracts because of the Legislative Audit Division's lack of resources and time. The audit was conducted because of his involvement. The audit says that the upland game bird project's costs are typically paid as the work is finished. If you look at the contract that the Russells signed, they were obligated to provide receipts before they could get payment, however, they did get the \$252,000 payment in advance of any work. The audit was unable to locate supporting documentation for some of the project payments. There were several other problems identified through the audit. For further information see Exhibit 8.

Craig Roberts, program participant, said that his first involvement with the DFWP local biologist was to do some fencing on a small property that they own. There was not a great deal of financial investment. They have also put in some upland game bird winter cover shelter belts. They had to put those in themselves and the cost was around \$7,000. They do help improve the bird numbers. In the late 1980's they had very few birds. They are required to provide free hunting opportunities. They harvested almost 100 roosters two years ago. This year there is a healthy pheasant population on his property. They have used the program since 1993.

Jack Puckett, Big Sky Upland Bird Association, has followed this program from the inception. They are aware of the shortcomings, but feel that over time it has been a good bill and something that they want to retain. When you manage land results don't come in the short term. If the habitat is there, the birds will show up eventually. This can't be evaluated on the number of birds produced. Weather is a problem. His group has felt that some changes were needed to the program. They have brought suggestions for changes to the program to Mr. Hagener. His response was very positive. The DFWP appointed a full-time biologist. They are into a management plan for the state for upland birds. The old plan was sketchy and didn't cover much. These things need time to work. If we reduce the program, it will take that much longer. We need to approach this with a positive look. This is the only program that the bird hunters have.

John Weegan, citizen, submitted written testimony, **EXHIBIT 9**. He is a wildlife biologist and member of the Wildlife Society. He has served in this profession for 42 years. His practice has taken him to Nebraska where he supervised statewide pheasant surveys for all department personnel. He is currently a member of Pheasants Forever. Habitat is a place where the animal lives. The first fish and game department study evaluated pheasant population and depredation on agricultural crops in the Yellowstone and Big River areas in the late 1940's. The majority of the full-time research emphasized food habits, reproduction, survival, and seasonal movements. The most ecological research pointed to the fact that habitat quality and quantity was responsible for the habitat populations in the state. Funds from the current program is joined with that of the contributions of other organizations, and is beneficial to local economies and wildlife. Research is nothing more than an inquisitive mind and a search for the truth. We need to leave the basic program intact. He said that not every site needs to be evaluated, but the efforts should be accomplished in no less than 4 years and no more than 10 years.

Rep. Rick Ripley, HD 50, said that he would support Rep. Shockley's legislation. The reason that he would request that a detailed list of expenditures be included is because of what was stated in the audit, and some correspondence to Rep. Shockley. Through his calculations there are 1 to 2 million dollars of unaccounted funds. The average project cost is \$29,900. There were

290 shelter belt projects that averaged a little over \$4,000 per project. The nesting cover projects average \$5,700: there were 303 of them. This is a good program and an evaluation needs to be done.

REP. HEDGES asked if a moratorium on the spending of the funds for 2 years is implemented, what would this do in terms of close down and start up costs **Mr. Hagener** said that there would be close down costs. Also, start up costs would not be there in the future. He can't give a clear number on those costs. **REP. HEDGES** asked, in terms of selling licenses to hunters including the fee for habitat, what relationship will there be if the money is not being spent on habitat enhancement. **Mr. Hagener** said that he doesn't imagine that the hunters will be real happy about it. They would also have to deal with the legislative statutes that say that the department can't accrue more than 2 years worth of income into a certain account.

REP. HEDGES asked, knowing that there are programs up and running, would it be okay to have the upland bird transferred to the DNRC where they already have in place habitat enhancement programs? **Rep. Shockley** said no. The sportsmen work with the DFWP and may not like having it transferred.

SEN. EKEGREN asked about the relationship between the department and the farmers. Is the payment a yearly thing? **Rep. Shockley** said that in the Russell Ranch case, it was a one time payment. If you read the audit report, it is customary to pay out over time. **Mr. Hagener** said that in the Russell Ranch case it was paid up front. Now it is done on a contract and they pay incrementally as parts of the project are completed. Once the project is complete, it has been paid for. The commitment is to be open to public hunting for 15 years. They are paid on the contract. **SEN. EKEGREN** asked if the rancher makes money on this proposition. **Mr. Hagener** said that there is to be a cost sharing amount. This can be done with sweat-equity. They didn't pay beyond the original project amount on the Russell Ranch. **SEN. EKEGREN** asked for consequences of not completing an enhancement project. **Mr. Hagener** said there would be no more payment.

REP. MOOD asked if the measure of the success should not be the number of pheasants. **Mr. Hagener** said that this covers all of the native birds that we have. The number of birds in a given year is not a measure of the program. There are a lot of birds that are not harvested. **REP. MOOD** said that the commitment is a long term commitment, should the trend go upward after the commitment has been made. **Mr. Hagener** said that was correct. **REP. MOOD** asked if this was a smart move by the department or by Sen. Smith. **Mr. Hagener** said that it was a smart move for those who put this in place. **REP. MOOD** asked if the program will be better because of the recent scrutiny or will it be worse. **Mr. Hagener** said that it is better now and the intent is that it will be better in the future.

MR. STRAUSE asked if the department had been contacted by sportsmen complaining about the program. **Mr. Hagener** said that there is more support for the program. They want more accountability for the program. The department would like to see more effort put into the program.

REP. CLARK asked if they had hired a FTE to be devoted fully to this program. **Mr. Hagener** said that was correct. **REP. CLARK** asked if the FTE was an upland game bird specialist. **Jeff Gross, DFWP**, said that he was. **REP. CLARK** asked if the program has vision. To have vision you need someone with vision guiding that program. **Mr. Gross** said that he is that person.

REP. CLARK asked if he has background in this area. **Mr. Gross** said that he did. He would get this program going in a positive fashion.

REP. BARRETT asked about the wildlife performance audit that came out in March 2000. Are there other programs that are going to follow this issue? Are there goals and objectives for all of the plans now? **Mr. Hagener** said that one of the provisions in many of the plans is a requirement for monitoring. **REP. BARRETT** said that the upland game bird and sage grouse conservation focus has been the habitat. Is it sound to focus only on habitat? **Mr. Hagener** said that there has not been a statewide study regarding predators. They are looking at hunting as an impact for sage grouse. They have also tried to follow what other states have done in regards to monitoring predators.

SEN. McNUTT asked about putting a moratorium on this program and whether that may do some damage to the sage grouse program. How many projects are going on that are working with sage grouse habitat? **John McCarthy, DFWP**, said that they have 55,000 acres in projects for sage grouse habitat under this program. **SEN. McNUTT** asked if it would be a mistake to stop this for 2 years and then try to start it up again. **Mr. McCarthy** said that one of the big concerns is that they are not seeing projects implemented on the ground. With this program they are able to do this. He feels that it would be a mistake to not go forward with this program.

Rep. Shockley said that mainly they agree. The project was in disrepair and the agency is moving toward making it better. The best way for them to do the project is to sit back, take 2 years to examine it, and then spend the money more wisely. It should be sunsetted to keep the pressure on. He feels that the agency will improve the program and it will be much better in 2 to 4 years.

SEN. McCARTHY said that she also has a bill draft in that will be working with the department and the Legislative Audit Division to make the changes that they feel are necessary.

REP. HEDGES said that he submitted a bill draft to transfer the upland game bird program to the Department of Agriculture.

VIII PUBLICATION APPROVAL

• Coal Bed Methane and Water Policy Report

MS. VANDENBOSCH said that this report summarizes the activities related to coal bed methane (CBM) and water policy that were undertaken by both the Subcommittee and the full EQC. **EXHIBITS 10**. The report was adopted with a few changes. There are no findings or recommendations.

MOTION/VOTE: **REP. HEDGES** moved to adopt the report. The motion passed unanimously.

• Water Quality Handbook

MS. EVANS referred to **EXHIBIT 11**. It was a major revision. It was approved by the Subcommittee with some changes that were made.

MOTION/VOTE: **REP. HEDGES** moved approval of the handbook. The motion passed unanimously.

- ***MEPA Handbook/ MEPA participation brochures***

MR. MITCHELL referred to **EXHIBITS 12**. The MEPA handbook needed some revisions because of the new legislation from the 2001 session. The other publications are the MEPA public participation brochures. **EXHIBITS 13 and 14**. This will be used at public hearings and scoping meetings. This is to help the public understand how to make useful comments.

MOTION/VOTE: MR. STRAUSE moved to approve all 3 documents. The motion passed unanimously.

IX LEGISLATIVE DISCUSSION – INITIATIVES/RECOMMENDATIONS

- ***EQC Oversight Cleanup Legislation***

MR. MITCHELL said this bill will be by request of the EQC. There is a bill draft out that was a clarification of language, **EXHIBIT 15**. This equalizes the authority of the EQC for oversight over boards attached to the departments. This went out for public comment, and as far as he knows there was none received.

MOTION/VOTE: REP. HEDGES moved to adopt the legislation. The motion passed unanimously. REP. CLARK will sponsor the bill.

- ***Petroleum Tank Release Compensation Board Financing***

MR. MITCHELL said that this proposal came out of the Subcommittee work. The fee increase would be 1/4 cent per gallon. Support of this issue passed out of the EQC. There is a letter from REP. HARRIS, see **EXHIBIT 16**. He has requested that a letter be drafted and sent to the DEQ. REP. HARRIS suggested that the EQC would send this to the department asking them to continue to make improvements to the administration of the program and report back on their progress, asking them to solidify more support for the fee increase by the session.

MR. EVERTS said that at the last meeting the EQC moved to support DEQ legislation to increase the fee for the petro fund. Further action may not be needed.

Jan Sensibaugh, DEQ, said that they brought forward the legislation to increase the fee. They have decided to not go forward with this proposal at this time.

MR. STRAUSE said that the subcommittee heard this and there was a lot of support for the increase. They heard from the people that actually do the work, landowners, and many more. They heard that in small communities some gas stations will have to close without this. REP. HARRIS was a big supporter of this.

Ms. Sensibaugh said that if they don't pursue this fee increase, it doesn't mean that the program goes away. They can continue to borrow money. The reason for increasing it was to avoid paying the interest on the borrowed money. The other option they can choose is that they can live within the gas tax revenue that they have. Claims may not get paid as expeditiously.

• *Other*

Ms. Sensibaugh said that they had a request to see if the DEQ had implemented the recommendations of an audit by the Legislative Audit Division on the state administered grant and loan programs. One of the recommendations was to repeal 4 laws that are no longer used. They need to repeal the laws. The first is a statute that was enacted in 1977 that allowed the department to grant loans to local governments for solid waste management projects. They can now allow grants through the state revolving grant and loan program. The next law authorized the state to make grants for energy efficiency analysis of state-owned buildings. Those were grants for people to retrofit buildings. When the money was gone, the program was gone. They now issue bonds for that. The next statute provides grants to conservation districts for state energy conservation programs for projects promoting energy conservation in agriculture. This was a grant program in response to the U.S. Department of Energy and money that was going to flow through the department to these types of activities. However, there has been a decrease in funds, so they are no longer receiving any funds. Any additional funds would flow through the DNRC. The last is the alternative energy and energy conservation research development loan program. The Legislature decided to transfer the funding source to the science and technology program, so the DEQ is no longer doing that.

REP. LINDEEN asked if there are any dollars in any of the programs that would revert somewhere else. **Ms. Sensibaugh** said that there was no money in any of the programs. There are also no FTE's assigned to these.

MOTION/VOTE: REP. HEDGES moved to request the draft legislation. The motion passed 12 to 1 with MR. STRAUSE voting no.

X OTHER BUSINESS

• *Montana Watershed Coordination Council and Watershed work in Montana*

Allan Rollo, Watershed Coordination Council, said that he wanted to increase the awareness of the watershed efforts around the state. **EXHIBIT 17**. The council is an informal group of members of the public, state and federal government entities, that serves to support and educate voluntary community based collaborative efforts. They support local watershed efforts around Montana. Watersheds are formed voluntarily and work as a team to find proactive and positive solutions to difficult issues. They spend countless hours to make things get done on the ground. They also work on drought management, fisheries enhancements, agricultural protection, and general education. All this comes at a price. It takes money. He is here to bring awareness of the effort and to request that the EQC continue to encourage and recognize the work of the watershed groups.

• *Other*

REP. HEDGES said that earlier in the interim, they had heard about the White Pine Sash issue. A letter was written to the department requesting that the property be segregated. The department said that they would do that after they had established numerical numbers for water quality. How far along are those standards? **Ms. Sensibaugh** said that they have been working diligently, but she didn't know the time schedule. She would provide that.

REP. BARRETT asked about the methamphetamine issue. There has been an ad about millions of dollars brought to Montana. **MR. O'HAIR** said that he thinks that there was a designation that came forward from Baucus. Now it is up to the Governor to accept that designation through some sort of an executive order. She is in the process of doing that.

XI **ADJOURN**

There being no further business, the meeting was adjourned.

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